THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7488 OF 2006

Dated: 18th September, 2006.

Between :

A. Kishore .. Petitioner

And

1. South Central Railways, rep. by the Senior Divisional Commercial Manager, Divisional Office, Commercial Branch, Gunakal, Andhra Pradesh & others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7488 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in terminating the contract awarded to the petitioner vide proceedings dated 14-3-2006 as arbitrary and illegal and for a consequential direction to permit the petitioner to carry on the work till 14-5-2008 i.e., the period for which the contract was originally awarded.

The facts, in brief, are as under :

The 1st respondent – Senior Divisional Commercial Manager, South Central Railways - issued a tender notice dated 4-3-2005 inviting tenders for operating a cycle-stand at Tirupati Railway Station. The petitioner was declared as the successful bidder and by letter dated 13-5-2005 the petitioner was awarded the contract for a period of 3 years from 15-5-2005 to 14-5-2008 at the total licence fee of Rs.4,68,007/-. He was also called upon to pay a sum of Rs.1,20,102/- towards licence fee for the 1st year apart from Rs.1,56,002/- towards the security deposit immediately, failing which the offer would be withdrawn and earnest money deposit would be forfeited without any notice. Pursuant thereto, the petitioner claims that he was allotted two parking places; one in front of Railway Station and the other opposite to Tirupati Railway station. On 19-4-2005 he paid a sum of Rs.35,900/-, Rs.560/-, by way of demand draft. That apart, he also paid a sum of Rs.45,102/- by cash on 13-7-2005. While so, on 21-7-2005 the 3rd respondent – Commissioner along with the Inspector of Police inspected the place allotted to the petitioner and informed in

writing that the place allotted in front of Railway Station did not belong to the 1st respondent, but it belongs to Tirupati Municipality. Immediately, on 21-7-2005 the petitioner issued a notice to the 1st respondent informing the said fact and requesting to return the amount deposited by him. However, the 1st respondent failed to take any action.

It is alleged that in the meanwhile Tirupati Municipality prevented the petitioner from collecting parking fee. In the circumstances, though the petitioner repeatedly requested the 1st respondent to cancel the tender and refund money, the 1st respondent did not consider. Even the request of the petitioner to extend the space allotted and to fence the parking area for the purpose of safety was not considered. On the other hand, the 1st respondent issued notices dated 21-9-2005 and 9-11-2005 calling upon the petitioner to pay the security deposit. The petitioner submitted a representation dated 21-11-2005 stating that he had already paid security deposit of Rs.1,50,000/- much prior to commencement of the contract. The fact that he had already stopped collecting parking fee in front of South Central Railway platform was also intimated. In spite of the same, the 1st respondent issued a final notice dated 6-1-2006 alleging that the petitioner had occupied more than the area earmarked for parking and calling upon the petitioner to pay the security deposit within one week. The petitioner gave a reply dated 25-1-2006 requesting to arrange a fence in front of the railway station building, failing which he would not collect parking fee w.e.f. 9-6-2005.

While so, the impugned notice dated 14-3-2006 was issued informing the petitioner that since he failed to pay the security deposit of Rs.1,50,000/-, licence is terminated with immediate effect and calling upon him to hand over possession of the cycle- stand. Aggrieved by the same, this writ petition is field contending that the 1st respondent had invited tenders without clearly demarcating the

parking area and knowing fully well that the place opposite to Railway Station does not belong to the 1st respondent. It is also alleged that the 1st respondent failed to take any action against the railway employees who have been parking vehicles without paying parking fee and that no fence was arranged around the parking place to provide safety to the vehicles parked.

On behalf of the respondents, a counter-affidavit is filed stating that except a sum of Rs.1,56,002/- paid at the time of commencement of the contract, the petitioner has not paid the security deposit in spite of repeated letters addressed by the respondents. It is also alleged that the petitioner has utilised more than the allotted place at the reservation complex. The parking area was allotted in two locations i.e., near the entrance gate of railway station to an extent of 100 sq. mts. and another 64 sq. mts in front of reservation office of Tirupathi railway station. The petitioner was also advised to execute agreement and pay security deposit time and again, which he failed to comply. The allegation that the petitioner was allotted land belonging to the Municipality has been denied and it is stated that the petitioner himself unauthorisedly occupied more than the Railway land and occupied municipality road which was objected to by the Inspector of Police and the Commissioner of Municipality. It is also alleged that as a matter of fact the petitioner having occupied more space than the Railway land had fenced the said area contrary to the tender conditions. The allegation that the area in front of Tirupati Railway station does not belong to Railways has been categorically denied. The plea that the petitioner informed the respondents that he stopped collecting parking fee w.e.f. 9-6-2005 has also been denied and it is contended that he had deliberately failed to execute the agreement and did not pay the security deposit. Hence, the impugned termination cannot be held to be arbitrary or illegal.

The petitioner filed an affidavit-in-reply denying the allegation

that he has occupied more than the allotted area.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the contract in question was awarded to the petitioner by letter dated 13-5-2005 subject to execution of agreement, payment of licence fee, security deposit, etc., as specified thereunder. In the said letter of acceptance, the petitioner was also informed that until the formal agreement is executed the acceptance under the said letter itself shall constitute a binding contract between the parties. Pursuant thereto, the petitioner was put in possession of the parking areas and he had commenced his business after paying the licence fee for the 1st year. Thus, even in the absence of regular agreement a concluded contract has come into operation and both the parties are bound by the terms specified under the Letter of Acceptance. Admittedly, the contract in question is not regulated by any statute and all the rights and liabilities of the parties are regulated by the terms and conditions of the contract itself. Hence, the dispute between the parties cannot be dealt with under Article 226 of the Constitution of India and on that ground alone the writ petition is liable to be dismissed.

Even on merits, it is to be noted that under the letter dated 13-5-2005 awarding the contract, the petitioner was required to deposit the security deposit of Rs.1,56,002/- which he failed to comply.

It is true that the petitioner alleged several lapses on the part of the respondents resulting in recurring loss in operating the cycle-stand. However, all the said allegations have been emphatically denied by the respondents. The alleged lapses on the part of the respondents which involve several disputed questions of fact cannot be enquired into by this Court and no finding as such can be recorded. Hence, the default committed by the petitioner in paying the security deposit as stipulated under the Letter of Acceptance is certainly a valid ground for termination of contract.

For the aforesaid reasons, the impugned order of termination cannot be held to be arbitrary or illegal and consequently the interference by this Court is not warranted.

However, this shall not preclude the petitioner to work out the appropriate remedy before the proper forum by adducing the necessary evidence to establish the alleged lapses on the part of the respondent and to seek damages or other appropriate relief. Any such proceedings, if instituted, shall be decided in accordance with law uninfluenced by any of the observations made by this Court.

Subject to the above, Writ Petition is dismissed. No costs.

_____

G. ROHINI, J.

Dt. 18–09-2006

Gbs